

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Zachary Jesse Perry,

Plaintiff

v.

Corthzuer Witness, et al.,

Defendants

Case No. 2:23-cv-00121-CDS-DJA

Order of Dismissal and Closing Case

Plaintiff Zachary Jesse Perry brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at the Henderson Detention Center. ECF No. 1-1. On January 26, 2023, the federal magistrate judge ordered Perry to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before March 27, 2023. ECF No. 3. The federal magistrate judge warned Perry that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 2. That deadline expired and Perry did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, I must consider: (1) the public’s interest in

1 expeditious resolution of litigation; (2) my need to manage my docket; (3) the risk of prejudice to
2 the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
3 availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
4 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public's interest in expeditiously resolving this litigation and my
6 interest in managing my docket, weigh in favor of dismissal of Perry's claims. The third factor, risk
7 of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
8 from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting
9 an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public
10 policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring
11 dismissal.


12 The fifth factor requires me to consider whether less drastic alternatives can be used to
13 correct the party's failure that brought about my need to consider dismissal. *See Yourish v. Cal.*
14 *Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives
15 *before* the party has disobeyed a court order does not satisfy this factor); *accord Pagtalunan v. Galaza*,
16 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive force of” earlier Ninth
17 Circuit cases that “implicitly accepted pursuit of less drastic alternatives prior to disobedience of
18 the court's order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend
19 coupled with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
20 Courts “need not exhaust every sanction short of dismissal before finally dismissing a case, but
21 must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
22 Cir. 1986). Because this action cannot realistically proceed until and unless Perry either files a fully
23 complete application to proceed *in forma pauperis* or pays the \$402 filing fee for a civil action, the
24 only alternative is to enter a second order setting another deadline. But the reality of repeating an
25 ignored order is that it often only delays the inevitable and squanders the court's finite resources.
26 The circumstances here do not indicate that this case will be an exception: there is no hint that
27 Perry needs additional time or evidence that he did not receive the court's order. Setting another
28

1 deadline is not a meaningful alternative given these circumstances. So the fifth factor favors
2 dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
5 dismissal. I therefore order that this action is dismissed without prejudice based on Perry's
6 failure to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing
7 fee in compliance with the January 26, 2023, order. The Clerk of Court is directed to enter
8 judgment accordingly and close this case. No other documents may be filed in this now-closed
9 case. If Perry wishes to pursue his claims, he must file a complaint in a new case.

10 DATED: April 5, 2023

11
12 
13 _____
UNITED STATES DISTRICT JUDGE